

Exhibit K

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1 UNITED STATES DISTRICT COURT
 1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

05 Cr. 621 (KMK)

5 ALBERTO VILAR

Hearing

5 GARY TANAKA,

6 Defendant.

6 -----x

New York, N.Y.

July 10, 2006

9:45 a.m.

8 Before:

9 KENNETH M. KARAS

District Judge

11 MICHAEL J. GARCIA

11 United States Attorney for the

12 Southern District of New York

12 One St. Andrew's Plaza

13 New York, N.Y. 10007

13 DEIRDRE A. McEVROY

14 MARC O. LITT

14 Assistant United States Attorneys

15 JEFFREY C. HOFFMAN, ESQ.

16 SUSAN C. WOLFE, ESQ.

16 Attorneys for Defendant Vilar

17 Hoffman & Pollik, LLP

17 260 Madison Avenue, 22nd Floor

18 New York, New York 10016

18 (212) 679-2900

19 GLENN C. COLTON, ESQ.

20 Attorney for Defendant Tanaka

20 Wilson Sonsini Goodrich & Rosati (NYC)

21 12 East 49th Street, 30th Floor

21 New York, New York 10017

22 (212) 999-5804

23 STEVEN G. KOBRE, ESQ.

23 Attorney for Defendant Tanaka

24 Kobre & Kim LLP

24 800 Third Avenue

25 New York, New York 10022

25 (212) 488-1200

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15 Q. What I am asking you is, other than paragraph 6A, there is
16 nothing else in your submission to the magistrate to support
17 your belief that there was probable cause to show that the
18 Mayers invested in Amerindo U.S., correct?

19 A. That's correct.

20 Q. On page 4, paragraph B as in "boy," you describe an
21 investment made by Lily Cates of a million dollars in or about
22 1988, correct?

23 A. That's correct.

24 Q. Do you anywhere in this affidavit describe that as a result
25 of that million-dollar investment made in or about 1988 by Lily
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1 Cates, she withdrew 6 to \$7 million from, quote-unquote, any of
2 the Amerindo entities?

3 A. No.

4 Q. Did you intentionally leave that information out?

5 MS. McEVOY: Objection.

6 THE COURT: Overruled.

7 A. No.

8 Q. On page 6, paragraph F as in Frank, which begins on the
9 bottom of page 5, if you go four lines down on the bottom of
10 page 6, you state, "Tens of millions of dollars were being
11 funneled to overseas accounts." Do you see that?

12 A. On page 6?

13 Q. 6, four lines down from the top.

14 A. Yes.

15 Q. Can you describe what you meant by the word "funneled."

16 MS. McEVOY: Objection.

17 THE COURT: Overruled.

18 A. Transferred.

19 Q. Did you use the word "transferred" in other places in the
20 affidavit?

21 A. I believe so.

22 Q. Can you tell us why you didn't use it there.

23 A. I don't know. I don't recall.

24 Q. Was it your choice to put in the word "funneled" or was
25 that put in by whoever made up the affidavit?

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1 A. It wasn't my choice.

2 Q. If you look at page 6, in the same paragraph, the next to
3 the last line of that paragraph, you say that there is reason
4 to be concerned that other investors are likewise being
5 victimized by Vilar and Tanaka. Do you see that?

6 A. Yes.

7 Q. You understood when you signed this sworn affidavit, did
8 you not, that there is a significant different between the
9 standard described here, "reason to be concerned," as opposed
10 to the much higher standard probable cause, correct?

11 A. That's correct.

12 Q. So you knew that the reason you used the term "reason to be
13 concerned that other investors are likewise being victimized by
14 Vilar and Tanaka" was because you didn't have probable cause to
15 believe that other victims -- excuse me -- that other investors
16 were being likewise victimized by Vilar and Tanaka, correct?

17 A. I felt this was a reason to be concerned, as it is worded
18 in the affidavit.
19 Q. Had you had probable cause to believe that other investors
20 were being victimized had you had information that went to that
21 higher level, then you would have used that term if, you had
22 it, correct?
23 A. That's correct.
24 Q. If you would looked page 7, paragraph numbered 8, you
25 state, the fourth line from the bottom of paragraph number 8,
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1 based on your training and experience, you know that
2 individuals involved in financial fraud schemes like that
3 described above frequently maintain at their places of business
4 for substantial periods of time records and materials which
5 evidence the operation of such schemes. Do you see that?
6 A. Yes.
7 Q. The investigation that you had been doing had revealed to
8 you, had it not, at the time that you made this affidavit and
9 as described in this affidavit (1) that there were guaranteed
10 fixed rate deposits that certain people said they cannot redeem
11 their money from -- correct?
12 A. Correct.
13 Q. -- and (2) that Lily Cates indicated she had invested a
14 million dollars in 1988, approximately, and then later 5
15 million in what was to be an SBIC investment, correct?
16 MS. McEVOY: Your Honor, no objection as to what is in
17 the affidavit, but to the extent that Mr. Hoffman's question is
18 going beyond that.
19 THE COURT: Let's wait until he gets there. That is
20 what is in the affidavit?
21 Q. That is what is in the affidavit, correct?
22 A. Yes, that's correct.
23 Q. Have you ever had any prior experience, as you described in
24 the line I just read to you, concerning other, quote-unquote,
25 frauds that involved guaranteed fixed-rate deposits?
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1 A. No.
2 Q. Or that involved SBIC investments?
3 A. No.
4 Q. In paragraph number 9 on page 7 you say there is probable
5 cause to believe that the following records and
6 instrumentalities of the fraudulent scheme described above and
7 other evidence related to and evidencing such crimes are
8 located at the premises.
9 Other than Lily Cates having told you that at some
10 time between 2002 and 2004, as stated in your affidavit, she
11 had been at the premises on Park Avenue and had seen
12 approximately 80 boxes that she said Mr. Vilar told her had
13 information that would be used in evaluating her investment --
14 are you with me?
15 A. Yes. I am just making sure that is what is in the
16 affidavit.
17 Q. Let me ask you this. Do you remember putting that in the
18 affidavit?

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1 about information showing that you had information concerning
2 the Mayers guaranteed fixed-rate deposits, correct?

3 A. Yes.

4 Q. In the document you show information concerning two
5 investments by Lily Cates, one in an SBIC fund, correct?

6 A. That's correct.

7 Q. And the other in Rhoades Capital, correct?

8 A. That's correct.

9 Q. Other than those three specific investments, isn't it true
10 that you put nothing in the documents that you submitted to the
11 magistrate to show any probable cause as to believe that there
12 was any criminality concerning any other of the many
13 investments of the various Amerindo companies?

14 A. That's correct.

15 Q. Was there anything preventing you, when you submitted this
16 affidavit and used the term "investment brochures," to limit
17 that description to say investment brochures concerning Rhoades
18 Capital, SBIC, and guaranteed fixed-rate deposits?

19 A. No.

20 Q. Next, when you say "marketing materials," did you mean by
21 "marketing materials," as you said a moment ago you meant by
22 "investment brochures," all marketing materials from all the
23 Amerindo companies?

24 A. That's correct.

25 Q. By "marketing materials," we are talking about documents
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1 and/or; it doesn't have to just be documents, right? It could
2 be DVD's or other things that describe and explain the various
3 companies of Amerindo and what they do, correct?

4 A. That's correct.

5 Q. Again, other than the three investments we just
6 described -- SBIC, Rhoades Capital, and guaranteed fixed-rate
7 deposits -- would it be accurate to say that you put no
8 information in the documents put before the magistrate to
9 support probable cause to believe that any of the other various
10 things that the Amerindo companies did for which they would
11 have marketing materials, that there was any illegality,
12 correct?

13 A. That's correct.

14 Q. Again, was there anything limiting you when you signed this
15 affidavit and used the term "marketing materials" to describe
16 the marketing materials and those concerning certain specific
17 situations?

18 A. No.

19 Q. Investment advisory agreements, the next category. There
20 is nothing in the documents that you put before the magistrate
21 to get the search warrant that contains any information
22 concerning investment advisory agreements between Amerindo U.S.
23 and all of its institutional clients, correct?

24 A. That's correct.

25 Q. There is nothing in the information you put before the
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2 A. Yes.
3 Q. One of them was not listed in paragraph E, that's correct.
4 So I will repeat the question. Isn't it accurate to say that
5 you put no information in your submission to the magistrate for
6 this warrant that would support probable cause to seize copies
7 of correspondence sent to or received from clients other than
8 those five from whenever the material originated 10, 20, 30
9 years ago to the date you filed this, correct?
10 A. That's correct.
11 Q. Once again, it would be correct that there was nothing
12 limiting you, nothing restricting you from being specific as to
13 the specific clients whose copies of correspondence you wanted,
14 correct?
15 A. That's correct.
16 Q. The same answer would be forthcoming from you regarding the
17 next category of other documents, correct?
18 A. That's correct.
19 Q. If you would look at paragraph B as in "boy" on page 8.
20 There you ask for documents concerning specific entities, to
21 wit, Bear Stearns, Amerindo Management, Inc., Sub ACM 26, which
22 you then call AM1, Amerindo Technology Growth Fund, Inc.,
23 Amerindo Technology Growth Fund II, Inc., and Techno Raquia
24 S.A., and you call those collectively the Amerindo brokerage
25 accounts, correct?

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1 A. That's correct.
2 Q. Is the reason you specifically state those entities that
3 you referred to as the Amerindo brokerage accounts because
4 those are the only brokerage account entities that you put
5 information in this affidavit for that would support probable
6 cause to take the documents underlying those accounts?
7 MS. McEVOY: Objection.
8 THE COURT: Sustained.
9 Q. Would it be accurate to say that other than in those
10 accounts, in your view, there is no information in your
11 submission to the magistrate for this warrant that would
12 support probable cause for any other brokerage account
13 documents than the ones named in paragraph B as in "boy"?
14 A. That's correct.
15 Q. This is redundant, but to be clear, because my own question
16 was a little hazy, what you have just sworn to is that other
17 than these named brokerage accounts in paragraph B as in "boy"
18 on page 8, there was no information in the documents you
19 submitted to the magistrate that would support probable cause
20 of wrongdoing concerning any other brokerage accounts, correct?
21 A. That's correct.
22 MR. HOFFMAN: May I have one moment, your Honor?
23 THE COURT: Of course.
24 Q. Looking at the paragraph we were just talking about, page
25 8, paragraph B as in "boy", would it be accurate to say that

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1 Amerindo Internet Fund is not mentioned there.
2 A. That's correct.
3 Q. Let me show you what is being taken from the box labeled

4 A01144105, one of the boxes that you supplied to us with
5 documents taken from the Amerindo offices on Park Avenue.
6 MR. HOFFMAN: May I approach, your Honor?
7 THE COURT: You may.
8 Q. Let me ask you to look at that and tell me if those
9 documents seized are from an entity not named in paragraph B as
10 in "boy", "Amerindo Internet Fund."
11 A. That's correct.
12 Q. Parenthetically, if there are documents of brokerage
13 accounts.
14 A. Yes, but it is covered on another paragraph in the
15 affidavit.
16 Q. Did you not tell us a moment ago that other than those
17 brokerage accounts named in paragraph B, did you not tell us
18 this two minutes ago that you did not have probable cause --
19 A. I did not submit probable cause.
20 Q. You did not submit probable cause in the affidavit
21 concerning any other brokerage accounts, correct?
22 A. That's correct.
23 Q. From the same box I am bringing you --
24 MR. HOFFMAN: If I may approach, your Honor?
25 THE COURT: You may.

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1 Q. -- documents seized by the government from an entity,
2 brokerage account, called Dextra, D as in "dog" E-X-T as in
3 "Tom" R-A II. I ask you to look at that and tell me if in fact
4 that is a file with brokerage accounts from an entity called
5 Dextra II.
6 A. That's correct.
7 Q. Again, that is not one of the entities named in paragraph
8 B, page 8, that we just talked about, correct?
9 A. That's correct.
10 Q. That would fall into the category, as you said a moment
11 ago, of brokerage accounts other than those named in paragraph
12 B for which you did not submit probable cause in the affidavit,
13 correct?
14 A. That's correct.
15 Q. Let me show you from the same box of documents seized by
16 the government a file for a company called O-L-A-F as in
17 "Frank" S as in "Sam" --
18 THE COURT: Do you have a bunch of them? Why don't
19 you show them all to her at once and move this along.
20 MR. HOFFMAN: I think that's it from this box.
21 THE COURT: OK. You were spelling Olafson. Go ahead.
22 Q. O-L-A-F as in "Frank" S as in "Sam" O-N as in "Nancy."
23 Would this also be documents from a brokerage account not named
24 in paragraph B as in "boy" on page 8 and one of those accounts
25 for which you have told us there was no probable cause to seize

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1 the documents?
2 A. That's correct, no.
3 Q. Correct?
4 A. I did not submit probable cause.
5 Q. You did not submit probable cause to seize these documents,

6 correct?
7 A. Correct.
8 Q. Let me ask you this. Since I am not prepared to do these
9 in bulk, have you gone through the documents in the various
10 boxes that you supplied to the defense that were brought here
11 in court?
12 A. Yes.
13 Q. Would it be accurate to say that there are a number of
14 brokerage accounts in addition to the ones I just showed you
15 whose documents were received which accounts were not named in
16 paragraph B as in "boy" page 8 and for which there was no
17 probable cause submitted to the magistrate?
18 A. They were seized, but they were seized under a different
19 paragraph of the affidavit. I had authority to seize it.
20 Q. I am not asking you whether or not there was a paragraph
21 that gave you authority to seize a whole bunch of things. That
22 is not my question.
23 A. OK.
24 Q. My question is, as with the ones I just showed you, that
25 there are other brokerage accounts that were seized that are
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1 not named in paragraph B as in "boy" on page 8 of the affidavit
2 and for which, as with the others you just testified to, there
3 was no probable cause to support the seizure, correct?
4 A. There was no probable cause in the --
5 Q. In the papers submitted to the magistrate?
6 A. That's correct.
7 Q. Thank you. In the same paragraph B as in "boy," page 8, if
8 you look three lines up from the bottom of that paragraph, you
9 stated that there was probable cause to seize, quote, other
10 documents reflecting or relating to securities transactions
11 entered into on behalf of clients by any current or former
12 Amerindo entity, affiliate, principal, officer, and employee.
13 Do you see that?
14 A. Yes.
15 Q. Would it be accurate to say that other than the five
16 individuals previously mentioned, there was no probable cause
17 to seize documents reflecting or relating to securities
18 transactions entered into on behalf of clients other than those
19 five that was put before the magistrate, correct?
20 A. That's correct.
21 Q. And there was no probable cause that was put before the
22 magistrate to seize any documents other than concerning the
23 five individuals we have mentioned that involved any current or
24 former Amerindo entities, affiliates, principals, officers, and
25 employees, correct?

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1 A. That's correct.
2 Q. In terms of your instructions to the individuals executing
3 the search warrant, would it be accurate to say that you never
4 instructed them to limit their seizure of materials from the
5 Park Avenue office to materials concerning the five individuals
6 we have been talking about?
7 A. No, it did not.

8 Q. Would it be accurate to say that you never instructed the
9 individuals who executed the search warrant that, other than
10 those five individuals, there was no probable cause in the
11 written material they had to support the seizure of any
12 materials other than for the five individuals we have named?
13 A. No.
14 Q. "No" meaning you never told them that?
15 A. No.
16 Q. I think you told us, did you not, that a number of the
17 individuals who were involved in the execution of the search
18 warrants had copies of the warrant and the underlying
19 affidavit, your affidavit, but not complaints concerning Vilar
20 and Tanaka, correct?
21 A. That's correct.
22 Q. In fact, and correct me if I am wrong, I think it was that
23 none of the officers, both inspectors, who were executing the
24 warrant had the Vilar and Tanaka complaints as part of the
25 paperwork they had when they were executing the warrant?
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1 A. That's correct.
2 Q. So the totality of the paperwork they had, "they" meaning
3 the officers executing the warrant, was your affidavit that we
4 have just gone through and attachment A, which was a part of
5 it, correct?
6 A. Yes.
7 Q. You told us that you answered questions of a number of the
8 individuals who were executing the search warrant, correct?
9 A. Yes.
10 Q. Did any of those individuals ask you, in words or
11 substance, since only five individuals were named in here,
12 should material referring to those five individuals be the only
13 material that they should take?
14 A. I don't recall, no.
15 Q. Did any of the postal inspectors who executed the warrant
16 ask you what time limitation they should look for when seizing
17 the documents, since there was none put in the material they
18 had in front of them?
19 A. No, I don't recall.
20 Q. When you say you don't recall, you don't recall anyone
21 asking you that?
22 A. No, I don't recall.
23 Q. Was it your instructions to the individuals who were
24 executing the search warrant that any and all material that
25 would come within the description of things to be seized
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1 contained in attachment A were appropriate to be seized?
2 A. I don't recall.
3 Q. You have just been shown some documents from various
4 brokerage accounts not named on page 8, paragraph B, correct?
5 A. Yes.
6 Q. You also testified on Friday that after the defense sent in
7 a notification of certain boxes that we wanted brought to
8 court, you went through some of those boxes and culled out
9 materials that you thought were improperly seized and sent

16 the government would like to reflect that Mr. Litt left the
17 courtroom during the portion of Inspector Fraterrigo's
18 testimony regarding what was told to her regarding the grand
19 jury subpoena. But he has now returned to the courtroom.
20 THE COURT: OK. I thought maybe he had forgotten his
21 No. 2 pencil. Go ahead, Mr. Hoffman. How much longer do you
22 think you have?
23 MR. HOFFMAN: You are the sixth person to ask me that.
24 I guess I am getting very boring. About 45 minutes I should
25 think.

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67arvilh Fraterrigo - cross

1 THE COURT: That's fine. You all should be thinking
2 about when we are going to continue this, because even I
3 realize we are not going to finish today.
4 MR. HOFFMAN: I did have one on that realm, one
5 hopefully time-saving aspect. I asked about brokerage accounts
6 similar to the ones that we had put in evidence, and I received
7 an answer. But I was wondering in terms of volume if it would
8 be a time saver, because I am thinking of the record as well,
9 rather than going through all of the other ones, if there would
10 be some way where we could just identify them by letter or
11 whatever the Court would suggest and make it a part of the
12 hearing. I just don't want to take the time to continue to go
13 through those. I just mention that to the Court.
14 THE COURT: That is fine. But even with that, we are
15 not going to finish today. You all can think about it at lunch
16 and we will talk about it at the end of the day.
17 Go ahead, Mr. Hoffman.
18 BY MR. HOFFMAN:
19 Q. If you look at page 8, paragraph D as in David of your
20 sworn affidavit submitted to the magistrate in this matter, you
21 will see on the bottom of page 8 paragraph D as in David is
22 part of the things you say you have probable cause for, to wit,
23 current and former client lists, client files, investment
24 brochures, marketing materials, etc.
25 I asked you certain questions and you gave me certain
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1 answers to that, correct?
2 A. Yes.
3 Q. In the same vein, paragraph E on page 9 calls for client
4 list, client files, investment brochures, marketing materials,
5 investment advisory agreements, copies of correspondence sent
6 to or received from clients and other documents concerning or
7 reflecting the identities of and communications with clients.
8 Up to that point, that is basically the same
9 description of materials for which you say you have probable
10 cause that was in the prior paragraph, right?
11 MS. McEVOY: Objection as to reading half the clause.
12 MR. HOFFMAN: I am going to continue on.
13 Q. I am saying up to that point it is the same description as
14 you had in the prior paragraph, right?
15 A. That's correct.
16 Q. Then it goes on to say, "concerning or reflecting the
17 identities of and communications with clients who have

18 investments managed by Amerindo, who receive redemptions
19 through or make investments through overseas bank accounts and
20 trust accounts." Do you see that?
21 A. Yes.
22 Q. Would it be accurate to say, as it was for the other
23 paragraph, that other than the five named individuals we talked
24 about, you submitted no probable cause to the magistrate to
25 support the seizure of the documents I just described?

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1 A. That's correct.
2 Q. Again, there was nothing stopping you from more narrowly
3 describing these documents, for example, by saying as they
4 relate to those five individuals, correct?
5 A. That's correct.
6 Q. Paragraph H, bottom of page 9, for which you say there is
7 probable cause to seize documents reflecting any Amerindo
8 investment in guaranteed fixed-rate deposit accounts, including
9 lists of clients with investments in GFRDAs, account statements
10 reflecting investments in GFRDAs, documents reflecting the
11 holdings of any Amerindo entity in certificates of deposit or
12 government entities, and documents reflecting all securities
13 underlying any investment in GFRDA.
14 Would it be accurate to say again that other than the
15 five individuals mentioned, there was no information put in the
16 material put before the magistrate for the search warrant that
17 would support probable cause for this material called for in
18 paragraph H other than as to those five individuals, correct?
19 A. That's correct.
20 Q. Again, there was nothing stopping you from limiting or
21 circumscribing the description on a narrower basis, correct?
22 A. That's correct.
23 Q. Paragraph I, documents reflecting any private bank,
24 brokerage, or other account with any financial institution held
25 by Amerindo principals, including Alberto Vilar and Gary

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1 Tanaka. Isn't it a fact that you had no probable cause to
2 support the seizure of documents described in that paragraph as
3 to Amerindo principals other than Alberto Vilar and Gary
4 Tanaka?

5 MS. McEVOY: Objection.

6 THE COURT: Overruled.

7 A. That's correct.
8 Q. Going to paragraph J, documents reflecting or relating to
9 the cancellation of completed trades and rebooking of those
10 canceled trades in other accounts managed or controlled by
11 Amerindo.
12 Would it be accurate to say that you had no probable
13 cause -- withdrawn -- that there was no probable cause
14 submitted to the magistrate to seize documents referred to in
15 paragraph J that I just described concerning cancellation of
16 completed trades and rebooking of those canceled trades in
17 other accounts managed or controlled by Amerindo as to anyone
18 other than the five individuals mentioned, correct?
19 A. That's correct.

20 Q. Paragraph L, which calls for documents reflecting brokerage
21 accounts maintained by Amerindo at any broker-dealer other than
22 Bear Stearns & Company. Would it be accurate to say that you
23 had not submitted any probable cause to the magistrate to
24 support the seizing of such documents concerning anyone other
25 than the five individuals mentioned?

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Fraterrigo - cross

1 A. That's correct.
2 Q. Paragraph M as in "mother," bank account statements,
3 brokerage account statement, transaction records, wire transfer
4 instructions and records, copies of checks sent to or received
5 from client, notes, ledgers, cash receipt journals, deposit
6 tickets and records, and other documents reflecting or relating
7 to movements of funds into or out of the Amerindo brokerage
8 accounts.

9 Would it be accurate to say that there was no
10 information included in the material you submitted to the
11 magistrate that would support probable cause to take or get
12 documents at the Park Avenue premises concerning any entities
13 or people other than the five that you have mentioned, is that
14 correct?

15 A. That's correct.

16 Q. Paragraph N as in "Nancy," page 10, records of expenses
17 such as copies of checks and/or wires sent to landlords. Would
18 it be accurate to say that there was no information submitted
19 to the magistrate that would support probable cause to take
20 copies of checks and/or wires sent to landlords?

21 A. That's correct.

22 Q. There would be no probable cause submitted to the
23 magistrate for records of expenses such as copies of checks
24 and/or wires sent to counsel, correct?

25 A. That's correct.

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Fraterrigo - cross

1 Q. The same, there is no probable cause for that material sent
2 to accountants, correct? Bottom of the page.

3 A. That's correct.

4 Q. Or to brokers?

5 A. Correct.

6 Q. Or to utility companies?

7 A. That's correct.

8 Q. Or to other organizations and individuals who provide goods
9 and services to Amerindo?

10 A. That's correct.

11 Q. Or corporation and government documents related to the
12 various entities with which Amerindo and Vilar conduct business
13 other than as to the five individuals?

14 A. That's correct.

15 Q. No probable cause put in the material put before the
16 magistrate for documents representing or reflecting
17 communication with accountants, correct? No probable cause for
18 that, correct?

19 A. If it is reflecting communications regarding the
20 individuals.

21 Q. Other than the five individuals?

2 A. Yes.
3 Q. Excluding the five individuals, I asked you if in fact you
4 had no materials put before the magistrate that would give the
5 magistrate probable cause to have you seize these various
6 categories, and question after question you answered by saying
7 that's correct, exclusive of the five individuals there was no
8 material put before the magistrate to support probable cause to
9 seize those documents. Do you remember those questions and
10 answers?
11 A. Yes.
12 Q. What I am asking you is that information which you just
13 gave us as to those categories where there was no information
14 put before the magistrate to support probable cause to seize
15 those documents, you had the same awareness at the time you put
16 the information before the magistrate, you knew at that time,
17 just as you have testified here under oath, that you were not
18 putting in the documents before the magistrate material to
19 support probable cause to seize those documents, correct?
20 MS. McEVOY: Objection.
21 THE COURT: Inspector, do you remember giving
22 testimony about client lists?
23 THE WITNESS: Yes.
24 THE COURT: And that there was probable cause. You
25 said that there was not probable cause to get all the client
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67arvilh Fraterrigo - cross
1 lists, there were only some client lists that you had specific
2 information. Do you recall that?
3 THE WITNESS: Yes.
4 THE COURT: The question is, is it a fact that you
5 knew you didn't have probable cause to get every client list at
6 the time you went and got the warrant?
7 MR. HOFFMAN: Correct.
8 THE WITNESS: That's correct.
9 Q. That's correct?
10 A. Mm-hm.
11 Q. It would be the same for all the other things that we asked
12 you, the other categories, not just client lists, but we went
13 through many categories, correct?
14 A. That's correct.
15 THE COURT: Breaking point here?
16 MR. HOFFMAN: Yes, sir.
17 THE COURT: Let's break for lunch. Come back at 2:15.
18 Everybody should give some thought to all your calendars. I am
19 not going to eliminate summer vacations, but we do need to take
20 some more time to finish this one.
21 You are still on cross.
22 (Luncheon recess)
23 AFTERNOON SESSION
24 2:15 p.m.
25 CYNTHIA FRATERRIGO, resumed.

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67arvilh Fraterrigo - cross
1 CROSS-EXAMINATION (continued)
2 BY MR. HOFFMAN:

3 Q. Good afternoon, Inspector Fraterrigo. You or some folks
4 that assisted you brought over a number of things that we had
5 talked about this morning, correct?
6 A. Yes.
7 Q. Let me give you what has been both designated 3501-L and
8 Government Exhibit 54, which are your search warrant
9 inventories. At one point you had talked about or I had asked
10 you some questions about a bunch of red and black books. I
11 think the number was nine. N10 is the sheet designated, I
12 believe. Do you have N10?
13 A. Yes.
14 Q. It says "9 black and red record" looks like "ledger
15 notebooks."
16 A. Yes.
17 Q. You said that you thought you looked at some, not all, and
18 you didn't remember certain specifics, correct?
19 A. That's correct.
20 Q. I have a box that was delivered here that says N10, and in
21 it I see seven -- I'm sorry -- I see nine red and black ledger
22 type books. I am going to hold them up. Are these the type
23 books you were referring to?
24 A. Yes.
25 Q. You also showed one black folder pad from N as in "Nancy"
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67arvilh Fraterrigo - cross
1 10. And I am holding up what I believe is what you were
2 referring to. Is that correct?
3 A. Yes.
4 Q. After the black folder pad, I am going to put an exhibit
5 number on MM. If I may approach, let me show you this. Let me
6 ask you to look at defense M as in "mother" M as in "mother"
7 and tell me whether or not you have looked through that
8 document before.
9 A. Yes, I have looked through it before.
10 Q. Tell me whether or not that document bears any relevance,
11 any material in it, to any of the five people we have been
12 talking about. And since we have taken a break, just for the
13 record, for the afternoon, the five people again, when I say
14 five people, the people I am referring are Cates, Mayer,
15 Harvey, Urich, and Marcus.
16 To perhaps speed this up, there is a document at the
17 beginning of this that is just a loose page. If you look at
18 that, does it appear to you that that was a conference on some
19 type of technical material, that this book is simply notes
20 taken at that conference?
21 MS. McEVOY: Objection.
22 THE COURT: She can answer it. Go ahead.
23 A. There is a schedule of a conference, but I can't say if
24 these notes are all from this conference.
25 Q. Then continue.

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67arvilh Fraterrigo - cross
1 Have you looked through it?
2 A. Yes.
3 Q. Would it be accurate to say that there is nothing contained
4 in defense M as in "mother" M as in "mother" that relates to

25 A. No, I did not. I am the case agent. I am closely familiar
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67arvilh Fraterrigo - cross
1 with the investigation. I did not --
2 Q. So you did not tell them?
3 A. -- tell any other inspector to do that.
4 Q. So even though you used that standard -- because you
5 thought that was appropriate, correct?
6 A. Yes. I felt I was capable to make that decision.
7 Q. You did not educate the other people executing the search
8 warrant so that they could use the same standard, you did not
9 do that, correct?
10 A. No, I did not.
11 Q. I am going to show you an Exhibit T as in "Tom," defense
12 Exhibit double T as in "Tom," which is government-seized
13 property evidence tag labeled A01144298.
14 THE COURT: Which, for the record, is a box.
15 MR. HOFFMAN: It is a box.
16 THE COURT: Presumably of documents, right?
17 MR. HOFFMAN: Yes.
18 Q. Showing you the box Defense Exhibit TT as in "Tom," would
19 you quickly take a look inside.
20 A. Yes.
21 Q. And tell me if there are not a number of files in there
22 that are just empty.
23 A. That's correct.
24 Q. Do you know if that box of empty files was taken that way
25 or if there was material in it that was taken out?

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67arvilh Fraterrigo - cross
1 A. I can't say for sure, but there might have been materials
2 inside that was taken out based on privilege.
3 Q. How would we know that if that were the case?
4 A. I would have to review the privilege boxes and identify
5 those items that belong in here.
6 Q. Thank you. Ordinarily, when materials are taken out
7 because they are privileged from some file or folder, is there
8 not some sort of note that is put in saying that that occurred?
9 A. Some inspectors had a system of doing that. Others took
10 the item out and on the privileged item indicated where it
11 belonged back in the original box.
12 Q. Do you remember approximately what time the actual search
13 ended? Let me make that clear. Let me withdraw it and make it
14 clear. The actual active searching at the premises on Park
15 Avenue ended.
16 A. I believe I was the last one who did the searching, and
17 that was the fax machine, and that was probably approximately
18 between 8:00 and 8:30 that night.
19 Q. Is it your testimony that it is your understanding that the
20 reason the search ended and that other materials were left
21 there --
22 MS. McEVOY: Let the record reflect that Mr. Litt is
23 leaving the room.
24 THE COURT: So noted.
25 A. Could you repeat the question.

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Fraterrigo - cross

1 Q. Is it your testimony that the reason that the search ended
2 and that other materials were left behind was because those
3 materials would be gotten by the government through a subpoena
4 that has been served?

5 MS. McEVOY: Objection. If he would just clarify what
6 he means by "those materials."

7 Q. There were materials left behind that you said were
8 indexed, correct?

9 A. That's correct.

10 Q. Is it your testimony that the reason those materials were
11 not taken, the search didn't continue and those materials were
12 not taken, was because it was understood that those materials
13 would be gotten by the government through a subpoena that has
14 been served?

15 A. It was my understanding of the materials that were left
16 behind in specific were covered under a subpoena. We didn't
17 stop searching once the subpoena was served.

18 Q. Is it your understanding that the subpoena covered just the
19 materials that were indexed and left behind?

20 A. At the time I don't recall what I knew specifically about
21 it. I know that they were inventorying a specific area because
22 of the subpoena being served.

23 Q. So what you observed happening, I think you said a moment
24 ago, correct me if I am wrong, is that even though a subpoena
25 was served, the search continued?

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67arvilh

Fraterrigo - cross

1 A. That's correct.

2 Q. And that at a certain time on the day of the search certain
3 materials were inventoried, and as you understood it that would
4 be the materials that would be gotten by the government
5 pursuant to the subpoena?

6 A. At the time I did not know what were those documents, what
7 were the exact documents that would be covered under the
8 subpoena. I knew that a specific area was being inventoried.
9 I asked my team leader about why inspectors were inventorying a
10 specific area, and he explained that those items were covered
11 under a subpoena. I don't know whether it included other
12 documents in the other offices.

13 Q. But at least those items, as far as you were told, were the
14 ones to be covered by the subpoena?

15 A. That's correct.

16 Q. You told us on direct examination that you read certain
17 Amerindo documents that you left behind.

18 A. That's correct.

19 Q. Do you remember the contents of those documents?

20 A. No, not specifically.

21 Q. At the time that you were doing your search, your
22 individual search, there was a DVD being made, correct?

23 THE COURT: A video?

24 Q. A video.

25 THE COURT: A video recording.

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Fraterrigo - cross

1 A. The video was done at the end of the search and the
2 beginning of the search.

3 Q. At the end of the search, when you had already determined
4 that there were certain Amerindo documents that you left
5 behind -- are you with me?

6 A. Yes.

7 Q. -- did you have the person making the video show which
8 documents those were?

9 A. No. The person doing the video was walking through the
10 office videotaping what was going on.

11 Q. I understand.

12 THE COURT: After you did the search of the office?

13 THE WITNESS: After the search, after all the
14 inspectors were done searching, she went through.

15 THE COURT: So that is a "no" to your question.

16 MR. HOFFMAN: I have no further questions, your Honor.

17 THE COURT: Let's take a break. I can't say for sure
18 how long we will be, but it will certainly be at least 20
19 minutes, Mr. Kobre. So if you would stick around the
20 neighborhood in case it is a little longer.

21 (Recess)

22 (Continued on next page)

23

24

25

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67ASVILAR2

Fraterrigo - cross

1 CROSS EXAMINATION

2 BY MR. KOBRE:

3 Q. Inspector Fraterrigo, good afternoon.

4 A. Good afternoon.

5 Q. I just want to ask you a few questions going all the way
6 back actually to the beginning of your cross examination
7 relating to your search through the 12 boxes of material that
8 were requested by the defense in preparation. Okay?

9 A. Okay.

10 Q. There came a time in May of this year that you became aware
11 that there were 12 specific boxes that the defense wanted to be
12 brought to the court so that the materials in those boxes could
13 be used to cross examine witnesses, correct?

14 A. That is correct.

15 Q. And specifically --

16 MR. KOBRE: If I may, your Honor, I would like to
17 offer defense VV, which is a letter, unfortunately I don't have
18 a copy because I got it from Ms. Wolfe today, but I represent
19 to the court that it's a letter Ms. Wolfe sent to the
20 government relating relating to the documents.

21 THE COURT: Okay. We will get a copy later.

22 Q. Inspector Fraterrigo, is it around the time that is on that
23 letter that you were made aware of the fact that the defense
24 wanted you to bring 12 boxes to court relating to cross
25 examination of the ongoing hearing?

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67ASVILAR2

Fraterrigo - cross

1 A. That is correct.

2 MR. KOBRE: Your Honor, I would offer for purposes of
3 this hearing Defendant VV.
4 MS. McEVOY: No objection.
5 THE COURT: I take it there is no objection,
6 Mr. Hoffman?
7 MR. HOFFMAN: No objection.
8 THE COURT: VV is received.
9 (Defendant's Exhibit VV received in evidence)
10 Q. And when you received that letter did there come a time
11 that you began to pull those boxes to make them available for
12 the hearing?
13 A. Yes.
14 Q. Around when did you do that?
15 A. Shortly after we received the letter, probably the next
16 day.
17 Q. And you knew when you were collecting them that the purpose
18 that the defense wanted you to bring the boxes was because they
19 wanted to ask the witness or witnesses questions about what was
20 in the boxes, correct?
21 A. That is correct.
22 Q. And there came a time -- withdrawn.
23 Approximately Friday of last week you returned
24 material from those boxes to Amerindo U.S.'s representative,
25 Eugene Licker, correct?
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67ASVILAR2 Fraterrigo - cross
1 A. I believe it was Friday, yes.
2 MS. McEVOY: If I can get a clarification, Friday of
3 what week?
4 MR. KOBRE: June 28.
5 A. Yes.
6 MR. KOBRE: If I may, your Honor, I would offer
7 Defendant UU, which I represent is a letter from Mr. Litt sent
8 to Mr. Licker.
9 MS. McEVOY: No objection, your Honor.
10 THE COURT: UU is received.
11 (Defendant's Exhibit UU received in evidence)
12 THE COURT: What is the date of the letter?
13 MR. KOBRE: June 28, 2006.
14 Q. Inspector, the letter that was sent indicates that
15 accompanied with the letter was material that had been removed
16 from the boxes that the defense had asked you to bring for this
17 hearing, is that not right?
18 A. That is correct.
19 Q. And am I also correct that between the time that Ms. Wolfe
20 sent the letter to the government and the time that you
21 returned the evidence from the boxes, Mr. Licker never called
22 you and asked you to actually return anything to him, isn't
23 that correct?
24 A. That is correct.
25 Q. And it's also correct that during that period of time you
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67ASVILAR2 Fraterrigo - cross
1 were never made aware of any phone calls or requests from
2 Amerindo U.S. to return any of the material that Amerindo U.S.
3 during the time that Ms. Wolfe made her request and the time

4 that you went into the boxes and sent the material back to
5 Amerindo U.S., correct?
6 A. That is correct.
7 Q. And you were aware at the time -- withdrawn.
8 You have been aware pretty much since the time this
9 case has commenced that the defense in this case has been
10 requesting the return of irrelevant materials to it, correct?
11 A. That is correct.
12 Q. And there have been numerous conferences where the defense
13 has actually publicly requested that material be returned to
14 it, correct?
15 A. That is right.
16 Q. And even as recently as back in March Mr. Colton had
17 actually asked that material be returned, correct?
18 A. That is correct.
19 Q. And at that time you didn't go through the 12 boxes and
20 return what you thought to be irrelevant material, did you?
21 A. At that time I don't recall the exact date but I did go
22 through the inventory sheets of all the boxes and based on what
23 was on the inventory sheets I pulled out stuff that was not
24 covered under the search warrant and I did return some
25 materials.

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67ASVILAR2 Fraterrigo - cross

1 Q. Did you actually go through the boxes?
2 A. No, I actually went through the inventory sheets.
3 Q. And can you explain what it was that compelled you in the
4 last week to go through the materials that the defense wanted
5 to use at this hearing and disturb them, if you will, and send
6 them to Amerindo U.S.?
7 MS. McEVOY: Objection to the characterization of the
8 testimony. I don't think it was the last week.
9 THE COURT: Whenever it was.
10 MR. KOBRE: Friday.
11 THE COURT: Whenever it was.
12 Go ahead.
13 A. When I reviewed the boxes for the purpose of the hearing,
14 as I went through the boxes I realized there were some items in
15 there that were not covered under the warrant.
16 Q. And was there something that you felt that there was
17 suddenly an urgency that those items needed to be returned and
18 couldn't wait the 6 days until this hearing that they had to be
19 sent back immediately?
20 A. I believe there was a discussion that it was just -- we had
21 no authority to be in possession of that material.
22 Q. So I take it, then, after seeing that material, then you
23 went back through the 150 other boxes and looked for material
24 that you didn't have authority to be in possession of as well,
25 is that right?

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67ASVILAR2 Fraterrigo - cross

1 A. I did not.
2 Q. Inspector Fraterrigo, just before we broke you had stated
3 that the reason why you felt that there was sudden urgency to
4 return the documents on Friday of last week was because you had
5 no authority to possess them, is that right?

6 A. Friday two weeks ago, June 28, exactly, that is correct.
7 Q. Just to be clear, the first day of the hearing when it was
8 supposed to be commenced was on the 7th of July, correct?
9 A. Yes.
10 THE COURT: Hang on. That is the date we adjourned
11 from the last go-round from May 31-June 1.
12 MR. KOBRE: Right.
13 Q. So on June 28 you sent the material back and approximately
14 7 days later it was going to be the continuation of the
15 hearing, correct?
16 A. Yes.
17 Q. Again, just before we broke I had asked you whether or not
18 believing that you didn't have the authority to possess
19 irrelevant material you went back at that time to the other 150
20 boxes to make sure that you weren't in possession of material
21 that you didn't have authority to possess?
22 A. No, I did not.
23 Q. And at that time realizing that you were in possession of
24 material that you didn't have authority to possess, did you go
25 back through the computers and ensure that the government
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67ASVILAR2 Fraterrigo - cross
1 wasn't sitting with material that was not relevant to the
2 search?
3 A. No.
4 Q. So am I correct that the only evidence that you decided to
5 return to Amerindo U.S. was from the 12 boxes specifically
6 requested by the defense to use at the hearing?
7 A. No, that is incorrect.
8 Q. One of the things you knew was you knew that -- withdrawn.
9 You sat in court and observed the questioning and the
10 testimony of Inspector Feiter, correct?
11 A. Yes.
12 Q. And you were aware that one of the lines of inquiry was
13 whether or not the warrant was overbroad, correct?
14 A. That is correct.
15 Q. And, therefore, you knew when you went through the boxes
16 and pulled out what you felt to be irrelevant material that the
17 material in those 12 boxes might be material that the defense
18 wanted to use at the hearing, isn't that right?
19 A. I don't know specifically you would want to use it at the
20 hearing.
21 Q. You thought it was a possibility, correct?
22 A. It could be a possibility, yes, correct.
23 Q. And you returned it on June 28, right?
24 A. That is correct.
25 Q. And you knew that July 4 separated when you returned it to
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67ASVILAR2 Fraterrigo - cross
1 the beginning of the hearing, right?
2 A. I am sorry?
3 Q. In other words, between June 28 and July 7 there was a July
4 4 holiday, right?
5 A. Yes.
6 Q. So if the defense actually wanted to acquire the material
7 and prepare from the material the defense would have to track

8 down or obtain them from Mr. Licker, correct?
9 A. I guess so. I guess that would be the case.
10 Q. I will ask you to look at the letter before you from Mr.
11 Litt.
12 A. Yes.
13 Q. Mr. Litt, do you see, didn't provide to the defense, or
14 even Mr. Licker, an inventory of which items you removed from
15 the 12 boxes that the defense wanted to use at the hearing,
16 correct?
17 A. That is correct.
18 Q. Did you create an inventory?
19 A. No, I did not.
20 Q. So you removed the items from the 12 boxes?
21 A. Yes.
22 Q. And just shipped them to Mr. Licker, correct?
23 A. That is correct.
24 Q. Did you make any sort of record of what you actually
25 removed from the boxes?

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67ASVILAR2 Fraterrigo - cross

1 A. No, I don't believe I did.
2 Q. And do you agree that from the letter that you are looking
3 at from Mr. Litt that cc's the defense counsel in this case,
4 you agree with me that from that letter there is actually no
5 way for the defense to determine which items you removed from
6 the boxes?
7 A. That is correct.
8 Q. You testified earlier today that one of the things you
9 removed from the 12 boxes was I think an audio tape, is that
10 correct?
11 A. That is correct.
12 Q. Do you see how in the letter Mr. Licker indicates that --
13 withdrawn.
14 Do you see that in the letter, one of the things Mr.
15 Litt indicates is that he was returning actually documents to
16 Mr. Licker, correct?
17 A. That is correct.
18 Q. Do you know where that tape is that you removed from the 12
19 boxes?
20 A. I believe it's contained in the envelopes.
21 Q. That were sent to Mr. Licker?
22 A. Yes.
23 Q. I see.

24 Do you know of either another inventory or another
25 cover letter that actually addresses items that were returned

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67ASVILAR2 Fraterrigo - cross

1 to Amerindo U.S. that were not documents?
2 A. No, I don't know of any other letter.
3 Q. Just so I understand now, 6 days before the hearing you
4 remove the items from the boxes?
5 A. Yes.
6 Q. And you sent the items to Amerindo U.S. and at least for
7 some of them, including the tape, there is actually no record
8 of the fact that you had actually removed it and sent it to
9 Amerindo U.S., is that right?

10 A. I didn't make a record, that is right.
11 Q. Isn't it true, Inspector Fraterrigo, that the real reason
12 why you went through the boxes and you removed items and sent
13 them to Amerindo U.S. was to impede or make it more difficult
14 for the defense to ask you questions about the overly broad
15 material that was in the 12 boxes?
16 A. No, that is incorrect.
17 Q. And it's your testimony that the reason why was you had a
18 belief at that time -- withdrawn.
19 It's your testimony that you had a sudden concern at
20 that time that the government had to immediately return
21 irrelevant material to the defense, is that your testimony?
22 A. As I went through it I think there was a discussion that I
23 had with the assistants and a determination was made to return
24 it.
25 Q. So in coming to the decision to remove the items from the
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67ASVILAR2 Fraterrigo - cross
1 boxes of evidence, you had conversations with the lawyers in
2 this case?
3 A. That is correct.
4 Q. And specifically the two prosecutors here today?
5 A. That is correct.
6 Q. Did you at any time consider whether any sort of
7 documentation or record should be sent to the defendants so
8 that they could adequately prepare for this cross examination?
9 A. No.
10 THE COURT: Do you have the letter? I just want to
11 get the dates straight, Mr. Kobre.
12 Okay, thank you.
13 Q. Inspector, did you at any time tell the lawyers in this
14 case -- and when I say lawyers I mean the prosecutors in this
15 case -- what items you were actually removing from the boxes?
16 A. They reviewed what I removed from the boxes.
17 Q. I want to do this briefly and move on to another topic. If
18 you can take us through or take me through, you obtained the
19 boxes after receiving Ms. wolfe's letter, correct?
20 A. Yes.
21 Q. You got the boxes and then did you make the decision that
22 you should go through the boxes and start removing items from
23 the boxes?
24 A. I went through the boxes, looked through it, and I
25 discovered there were items in there that were not covered
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67ASVILAR2 Fraterrigo - cross
1 under the warrant and as I pulled them out I showed them to the
2 assistants and they reviewed it and a decision was made that
3 they were going to return them.
4 Q. And is it fair to say also that when you reviewed the boxes
5 and you discovered that there were items in the boxes that were
6 not responsive, is it fair to say you weren't surprised?
7 A. Excuse me?
8 Q. Is it fair to say you were not surprised by that fact?
9 A. I was surprised.
10 Q. You were surprised. Until you actually looked through
11 those 122 boxes it was your expectation that all 168 boxes only

12 contained responsive material? Is that your testimony?
13 A. I assumed they were all responsive material in all the
14 boxes.
15 Q. That was your assumption, right?
16 A. Yes.
17 Q. There came a time in this case when you petitioned to Judge
18 Maas for an extension of the warrant for the purposes relating
19 to returning the server, correct?
20 A. Yes.
21 Q. At the time that you actually approached Judge Maas, you
22 were aware of the fact that the government had actually issued
23 a subpoena to cover the material that had been left at Amerindo
24 U.S., correct?
25 A. Yes.

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67ASVILAR2 Fraterrigo - cross
1 Q. And did you at any time inform Judge Maas that the
2 government had, by the time you had approached Judge Maas,
3 issued a subpoena for the material from Amerindo U.S.?
4 A. I did not inform him, no.
5 Q. Did you inform Judge Maas that the government had entered
6 into an agreement with Amerindo U.S. to preserve evidence and
7 to provide the evidence pursuant to a subpoena?
8 A. No, I did not.
9 Q. So is it fair to say that as far as Judge Maas was
10 concerned the urgency that would have been expressed in your
11 original search warrant affidavit would be one that he still
12 may very well have believed was the case?
13 MS. McEVOY: Objection.
14 THE COURT: Sustained as to form.
15 Q. Is it fair to say that in petitioning Judge Maas for the
16 extension as it relates to the server, it was your
17 understanding that Judge Maas was not aware that the government
18 and Amerindo U.S. had entered into agreements to preserve and
19 produce the evidence?
20 MS. McEVOY: Objection as to form.
21 THE COURT: Well, I mean the bottom line is,
22 Inspector, were you aware of any other applications made to
23 Judge Maas in connection with this extension?
24 THE WITNESS: No.
25 THE COURT: All right. And when you went, you didn't

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1 tell Judge Maas nor anybody from the government that was with
2 you inform Judge Maas of the subpoena or the preservation
3 agreement, is that right?
4 THE WITNESS: Not in my presence.
5 THE COURT: Was there anybody who met with Judge Maas
6 not in your presence that you are aware of?
7 THE WITNESS: No.
8 THE COURT: Okay.
9 Go ahead, Mr. Kobre.
10 MR. KOBRE: Thank you, your Honor.
11 Q. What training have you received in your experience relating
12 to the drafting of search warrants and search warrant
13 affidavits?

14 A. I have had some training in the Secret Service Federal Law
15 Enforcement Training Center at Glencoe, Georgia, and in
16 Potomac, Maryland, the U.S. Postal Inspector training.
17 Q. How many search warrants have you actually been involved in
18 drafting?
19 A. Actually typing them up?
20 Q. How about being the affiant?
21 A. Being the affiant, several.
22 Q. Can you give me a ballpark?
23 A. 20, 25 I think.
24 THE COURT: I am sorry?
25 THE WITNESS: 20, 25 that I have actually had a search
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1 warrant of my own.
2 Q. In those 20 or 25 you were the agent or inspector that
3 swore out the warrant, correct?
4 A. That is correct.
5 Q. And in your experience have you ever been part of a factual
6 discussion with the magistrate or a magistrate judge issuing
7 the warrant regarding the substance of the request for a
8 warrant? When I say the substance, I mean the actual factual
9 underpinnings.
10 A. No.
11 Q. Is it fair to say, this is the first time this has happened
12 to you?
13 A. What has happened to me?
14 Q. In other words, where a judge -- withdrawn.
15 Where you were swearing out a search warrant affidavit
16 and there was a discussion with the judge about substantive
17 aspects of the request.
18 A. Yes, I believe so.
19 Q. And --
20 A. I think so. I believe so. I think it is.
21 Q. You believe it's the first time?
22 A. Yes.
23 Q. And after you swore out the warrant, did you write down
24 what Mr. Litt had told Magistrate Judge Maas?
25 A. No.

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1 Q. Did you write it down at the time?
2 A. No.
3 Q. Did you write it down at the time you went back to your
4 office?
5 A. No.
6 Q. Did you memorialize what had happened in any way?
7 A. No, I did not.
8 Q. You understood that the facts and -- withdrawn.
9 You understood from your training, did you not, that
10 the information that was provided to a judge in obtaining a
11 warrant is important information, correct?
12 A. Yes.
13 Q. And knowing that, you understood that it would be important
14 to actually have a record of what actually occurred with Judge
15 Maas, isn't that right?

16 A. I don't believe so.
17 Q. You were the case agent on the case, right?
18 A. Yes.
19 Q. And you were the affiant, right?
20 A. Yes, I am.
21 Q. And it appeared from the questions that Judge Maas was
22 asking he was struggling a bit with some of the factual
23 allegations that was in the warrant, correct?
24 MS. McEVOY: Objection.
25 THE COURT: Sustained as to form.
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1 Q. Well, Judge Maas was asking questions about inferences that
2 could be drawn from the affidavit, isn't that correct?
3 MS. McEVOY: Objection.
4 THE COURT: Do you want to ask her what kind of
5 questions he asked?
6 Q. Sure.
7 A. I don't recall the questions he asked. I recall he asked a
8 question and I recall he pointed to the chart in Gary Tanaka's
9 complaint. That is all I recall.
10 Q. And you agree with me that had you actually written down at
11 the time what he had asked or what Mr. Litt had said, it may
12 very well have refreshed your memory so that you actually could
13 today testify about what happened that day, correct?
14 A. Yes, that is correct.
15 Q. Is it your testimony that you do recall Judge Maas actually
16 asking questions?
17 A. I recall he asked a question. I don't know how many. He
18 was referring to the chart. That is all I recall.
19 Q. Do you recall whether he was asking it of you or asking it
20 of Mr. Litt?
21 A. Mr. Litt.
22 Q. And you recall Mr. Litt, as you say, pointing to the chart
23 and you recall not necessarily what he said but do you recall
24 him actually saying anything?
25 A. I recall him saying something but I don't recall what it
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1 was. I saw him answering.
2 Q. And you also I believe testified on direct examination that
3 you had supervised the search of Amerindo U.S. along with team
4 leader Feiter, correct?
5 A. That is correct.
6 Q. Approximately how many searches have you supervised?
7 A. I would say approximately 20.
8 Q. Is it essentially the same 20 that you were the affiant on
9 the search warrant?
10 A. Yes.
11 Q. I want to ask you just a couple of questions about your
12 preparation for your testimony.
13 First, let me just ask you, in between the lunch
14 break, did you have any conversations with anyone relating to
15 your testimony at this hearing?
16 A. No, I did not.
17 Q. Did you have any conversations with anyone even just

18 generally relating to testifying?
19 A. Yes.
20 Q. Who did you speak to?
21 A. My husband.
22 Q. And without getting into the substance of the conversation
23 with your husband, did the conversation at all touch upon the
24 facts or circumstances of this case we are here on?
25 A. No, it did not.

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1 Q. I might as well ask you this now, the burning question is
2 who is R. Fraterrigo?
3 A. My husband, Robert Fraterrigo.
4 Q. And so your husband was actually present at the search of
5 Amerindo U.S.?
6 A. Yes.
7 Q. Prior to your testimony and your direct examination, what
8 did you do to actually prepare to testify?
9 A. I reviewed my notes. I reviewed my complaints. I reviewed
10 the search warrant affidavit. I reviewed my investigative
11 notes, and my inventory forms.
12 Q. When you say your investigative notes, what does that mean?
13 A. I mean my 3500 material, what has been provided.
14 Q. Basically the MOIs, the memorandum of interviews?
15 A. No, my notes that I had of the search, my 3500.
16 Q. I take it you also met with the government prior to
17 testifying, correct?
18 A. Yes, I did.
19 Q. Approximately how many times did you meet with the
20 government in preparing to testify?
21 A. Several times.
22 Q. How much is several?
23 A. Maybe 5 or 6, 7 times, probably more than that.
24 Q. Approximately how much time would you say you spent with
25 them during each one of those sessions?

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1 A. Several hours.
2 Q. And during those sessions did you rehearse your direct
3 examination?
4 A. We went over my direct examination.
5 Q. Did you also go back and -- withdrawn.
6 Inspector Fraterrigo, you were asked a number of
7 questions about inventory and exhibits that were obtained from
8 Alberto Vilar's office, do you recall that?
9 A. Yes.
10 Q. And do you recall during one part of your direct
11 examination Ms. McEvoy asking you about a number of items on
12 the inventory sheets and asking you to actually recite what
13 those references on the inventory sheets referred to, do you
14 recall that?
15 A. Yes.
16 Q. And do you recall specifically in one instance Ms. McEvoy
17 had asked you if you could recall and recount for the court
18 relating to what was indicated as N6 what three red and black
19 ledger notebooks contained? Do you recall her asking you